



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

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July 21, 2003

LLOYD W. PELLMAN

County Counsel

TDD

(213) 633-0901

TELEPHONE

TELECOPIER

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **George Suarez and Marcus Turner, et al. v. Leroy Baca, et al.**
United States District Court Case No. CV 00-03995 AHM

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$295,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Sheriff's Department.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Sheriff's Department.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

May 22, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: RICHARD KREISLER
Liebert Cassidy Whitmore

RICHARD BROUWER
Senior Deputy County Counsel
Management Services Division

RE: George Suarez and Marcus Turner, et al. v. Leroy Baca, et al.
United States District Court Case No. CV 00-03995 AHM

DATE OF
INCIDENT: March 26, 1999

AUTHORITY
REQUESTED: \$295,000

COUNTY
DEPARTMENT: Sheriff's Department

CLAIMS BOARD ACTION:

<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	<input type="checkbox"/> Recommend to Board of Supervisors for Approval
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_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$295,000 a lawsuit filed in United States District Court by the Association of Los Angeles County Deputy Sheriffs (ALADS) and Plaintiffs George Suarez and Marcus Turner (both of whom are Deputy Sheriffs.) In addition, this settlement provides that the Sheriff's Department will conduct certain in-house training.

The lawsuit alleges that the Plaintiffs' civil rights, including their right to associate with and to receive services of a labor union and their right not to be compelled to be witnesses against themselves in a criminal case, were violated during an internal criminal investigation.

LEGAL PRINCIPLES

A public entity and its employees are liable pursuant to the Federal Civil Rights Act for depriving a person of rights guaranteed by the Constitution. A prevailing plaintiff is entitled to damages, injunctive relief if appropriate, and attorneys fees.

SUMMARY OF FACTS

On August 10, 1998 probationary Deputies Suarez and Turner, were present at the County's Twin Towers Custody Facility when force was used by several deputies and other custody personnel on a mentally ill inmate. None of the personnel who participated in or witnessed the use of force appropriately reported the incident as required by Sheriff's regulations.

The Department's Internal Criminal Investigations Bureau conducted a criminal investigation of the use of force incident. Plaintiffs were among the subjects of the investigation.

Plaintiffs allege that during the criminal investigation they and their union attorney repeatedly advised the Sheriff's investigators that they did not wish to make any statement without counsel present. It is further alleged that during the investigation and related Grand Jury proceedings, Plaintiffs were repeatedly pressured outside the presence of counsel to make statements regarding the use of force incident. They were advised that they were getting bad advice from their attorney, and that their cooperation would be considered with respect to the deputies successfully passing probation. Plaintiffs also complain of other acts such as an unannounced nighttime visit to Plaintiff's home during the investigation.

The Plaintiffs exercising their privilege against self-incrimination refused to testify before the Grand Jury. Thereafter they were notified that the decision to release them from their positions as probationary Deputy Sheriffs and return them to their former positions as Custody Assistants had become final.

Ultimately, the investigation established that neither Plaintiff participated in the use of force that was the subject of the investigation.

Both Suarez and Turner administratively appealed the decision to release them from probation to the Civil Service Commission. The Civil Service Commission ordered them restored to their positions as Deputies. The Commission found that Plaintiffs had engaged in protected activity and that their engaging in the protected activity was a substantial reason for the Department releasing them from their probationary Deputy status.

DAMAGES

Should the matter proceed to trial, it is estimated that damages could be as follows:

Suarez' pain and suffering	\$ 150,000
Turner's pain and suffering	\$ 150,000
Attorney's fees:	\$ 200,000
ALADS:	\$ 50,000
Punitive Damages	unknown

Other: Costs associated with injunctive relief.

In addition ALADS is seeking the issuance of a permanent injunction against the Sheriff's Department prohibiting it from engaging in interrogations, employee contacts, or questioning in a broad range of circumstances.

STATUS OF CASE

The trial court proceedings in this matter were suspended pending settlement discussions. Three settlement conferences were held by U.S. District Court Judge took great interest in this matter although the case is assigned to another judge. The Undersheriff was present as Departmental representative. The County's attorneys fees and costs are approximately \$60,000.

PROPOSED SETTLEMENT

In exchange for dismissal of this case, the proposed settlement provides for a total monetary payment of \$295,000. This consists of payments of \$75,000 to both individual Plaintiffs and payment of attorneys fees in the amount of \$145,000 (\$45,000 of this amount is to be paid over a three-year period.)

Additionally the Department agrees to implement over the next three years in-house training on the rights afforded peace officers during internal criminal investigations. The training, which will be conducted by the Office of Internal Review, will be of one or two hours in duration, and will be directed toward internal investigators, Executive Staff and supervisory personnel.

EVALUATION

The Civil Service Commission's finding that the Plaintiffs' engaging in protected activity was a substantial reason for their release from their jobs is problematic, and in all likelihood will be considered binding on the County with respect to liability.

The proposed economic settlement, while unfortunately necessary to resolve this matter, eliminates the County's risk of a larger verdict and higher attorneys fees award, and avoids further legal expenses.

In addition, the settlement eliminates the risk of a possible broad injunction with potentially expensive monitoring. Instead, the Department will provide training in order to minimize the likelihood that the conduct giving rise to this litigation will be repeated.

This settlement was enthusiastically recommended by the judge presiding over the settlement process.

RECOMMENDATION

We recommend settlement of this matter for the reasons stated in our evaluation. The Sheriff's Department concurs.

APPROVED:


DAVID B. KELSEY
Assistant County Counsel

Los Angeles County Sheriff's Department

CORRECTIVE ACTION REPORT

LAWSUIT OF: Suarez et. al v. Baca et. al, USDC Case No. CV 00-03995 AHM

INCIDENT DATE AND TIME: March 26, 1999

INCIDENT LOCATION: Los Angeles County Sheriff's Department

RISK ISSUES: A public entity and its employees may be liable pursuant to the Federal Civil Rights Act (42 USC § 1983) when such defendants (with the individuals acting under color of authority) deprive a person of rights guaranteed by the Constitution. A prevailing plaintiff is entitled to general (i.e. pain and suffering) and special (i.e. lost wages and medical) damages, punitive damages if proven (from individual defendants), and the payment of reasonable attorney's fees (which are typically computed at the rate of \$350-\$500 per hour and are often trebled depending upon the complexity of the litigation and the rights at issue).

INVESTIGATIVE REVIEW: On August 10, 1998, at approximately 4:45 a.m., Suarez and Turner were present at the County's Twin Towers Custody Facility when force was used by several sworn deputies and/or other custodial personnel on a mentally ill inmate, Timothy Burns.

After Brooks' report was filed, a criminal investigation was launched by the Department's internal criminal investigations arm, the Internal Criminal Investigations Bureau (hereinafter "ICIB").

On April 7, 1999, Suarez and Turner appeared at a related criminal grand jury hearing pursuant to a subpoena. Both Suarez and Turner exercised their 5th Amendment privilege against self incrimination and refused to testify before the grand jury. On April 16, 1999, Suarez and Turner were notified that the decision to release them from probation and return them to their former Custody Assistant positions had become final.

Both Suarez and Turner administratively appealed the decision to release them from probation to the Los Angeles County Civil Service Commission (hereinafter "Civil Service Commission"). The Civil Service Commission ruled that: (1) the Appellants engaged in protected activity in that, while the subjects of a criminal investigation that might lead to criminal charges as well as disciplinary actions, they refused to participate in interviews outside the presence of their counsel; and (2) the Appellants' continuous attempt to engage in protected activity was a substantial, or the motivating reason for the Department's action releasing them from their probationary deputy status.

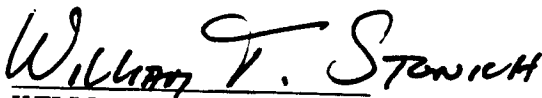
Los Angeles County Sheriff's Department

CORRECTIVE ACTION REPORT

TRAINING/POLICY ISSUES: At the time of this incident, the Sheriff's Department did not have policies in place regarding criminal investigations of Department employees. In addition, the Department did receive training on criminal investigation but not specific training involving Department employees. When conducting criminal investigations on Department employees, the Department relied upon guidance provided by the District Attorneys Office. However, investigating Department employees as evidenced here, necessarily involves union issues, civil service issues and possibly the Public Safety Officer's Procedural Bill of Rights. The District Attorneys Office is not designed to handle these types of issues.

CORRECTIVE ACTION: The settlement in this case is unique in that it contains the corrective action plan. As part of the agreement, the Department has agreed that the Office of Independent Review, County Counsel, and the Department will conduct training regarding both internal criminal investigations and internal administrative investigations. Following this incident, Internal Affairs Bureau and Internal Criminal Investigations Bureau have drafted policies that have been reviewed by County Counsel. In addition, the County Counsel's Office and the District Attorneys Office have established communications so that there is greater understanding of criminal investigations involving Department employees. The Sheriff's Department's criminal investigators were not disciplined in this matter because of the lack of training and because they were using their best efforts to investigate Department employees that may have engaged in the use of force on an inmate and did not report it.

Approved:


WILLIAM T. STONICH
UNDERSHERIFF